

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, et al.,)	CASE NO. 8:08-CV00090
)	
Plaintiffs,)	
)	
vs.)	
)	
NEBRASKA BEEF, INC. and,)	
NEBRASKA BEEF, LTD.,)	
)	
Defendants.)	
_____)	
DAVID CHUOL, et al.,)	CASE NO. 8:08-CV00099
)	
Plaintiffs,)	
)	
vs.)	
)	
NEBRASKA BEEF, LTD.,)	
)	
Defendant.)	

DEFENDANTS' MOTIONS

- 1. For Notice to Rule 23 Class;**
- 2. To Continue Trial;**
- 3. For Expedited Briefing Schedule; and**
- 4. For Oral Argument.**

COME NOW the defendants, NEBRASKA BEEF, INC. and NEBRASKA BEEF LTD. (hereinafter collectively "Nebraska Beef), and request the Court for the relief set forth above. Counsel for the defendants, to include William M. Lamson, William R. Settles, Brian J. Brislen have conducted personal consultation with counsel for the plaintiffs, to include Carolyn Cottrell and Shanon Carson, since late February in a sincere attempt to identify and resolve their differences regarding the notice to be given to the Rule 23 class but have been unable to reach an accord. In support of their motions, defendants state as follows:

1. On August 21, 2009, Plaintiffs moved, through counsel, for certification of a class under Rule 23 to pursue claims made under Nebraska State law. (Filing No. 112).

2. On January 4, 2010, the Magistrate made his Report and Recommendation that, among other things, the Rule 23 class be certified. (Filing No. 173)

3. Defendants timely appealed the findings set forth in the Report and Recommendation to the District Judge who later adopted the Report and Recommendation in full on February 16, 2010. (Filing No. 185).

4. On February 22, 2010, Plaintiffs' counsel submitted to Defendants' counsel a Proposed Class Notice and proposed Stipulation regarding the Class Notice.

5. On February 26, 2010, the parties conferred by telephone regarding several issues remaining in the case including the Proposed Class Notice.

6. On March 1, 2010, Defendants submitted their Proposed Class Notice to counsel for Plaintiffs.

7. On March 10, 2010, counsel for Plaintiffs acknowledged receipt of Defendants' Proposed Notice and suggested a conference call to identify issues where the parties disagreed.

8. The parties attempted to confer various times but were not able to connect until March 18, 2010. At the conclusion of the conference on March 18, counsel for Plaintiff indicated that an additional proposal would be forthcoming on March 19.

9. On March 19, no additional proposed submission was received from Plaintiffs' counsel but the parties did confer again regarding several differences in their respective positions with the conclusion again being that Plaintiffs' counsel would, by Monday, March 22, 2010, be submitting another draft for review by Defendants' counsel. However, following this conversation it was clear that, as to at least the time period for which opting out of the Rule 23 class would be allowed, the parties did not agree.

10. As of 4:00 p.m. central time on March 22, 2010, no additional submission has been received from Plaintiffs' counsel by Defendants' counsel. As a result, Defendants submit that this Court should adopt their Proposed Notice (with specific dates to be filled in once the opt-out schedule is set by the Court, the Notice can be fully translated from English to Spanish and the Notice Administrator can coordinate the required mailing).

11. Defendants, in order that fair notice and opportunity to opt out of the Rule 23 class be allowed, also move for a continuance of the Trial Date (currently specially set to begin on June 21, 2010) to dates which will allow for at least 150 days for individuals to opt-out of the Rule 23 class.

12. Defendants also move for an expedited briefing schedule due to the nature of the relief requested and given the Plaintiffs' position regarding the limited time period that they believe should be allowed for individuals to opt-out of the Rule 23 class.

13. Defendants also move for a hearing on the relief requested herein.

WHEREFORE, Defendants pray for the relief set forth above.

Respectfully submitted this 22nd day of March, 2010.

NEBRASKA BEEF, INC., and NEBRASKA
BEEF, LTD., Defendants,

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March, 2010, I electronically filed the foregoing motions with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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